

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
5  
7  
8  
9  
0  
1  
2  
3  
4  
5

Findings and Recommendations, signed by U.S. Magistrate Juba, showing no date of issuance (CR 47) filed June 3, 1981.

Findings and Recommendations, signed by U.S. Magistrate Juba, dated July 28, 1981 (CR 76)

Findings and Recommendations, signed by U.S. Magistrate Juba, showing no date of issuance (CR 47) filed June 3, 1981.

Findings and Recommendations, signed by U.S. Magistrate Juba, dated July 28, 1981 (CR 76)

APPENDIX C

APPENDIX D

## APPENDIX E

## APPENDIX F

Page

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROLF BETKA, )  
 )  
Plaintiff, )  
 )  
v. ) Civil No. 81-67  
 )  
STATE OF OREGON, Richard B. ) FINDINGS AND  
Spooner, Howard Clyman, ) RECOMMENDATION  
Douglas S. Robertson, Gary R. )  
Olson, BOARD OF EDUCATION OF )  
WEST LINN SCHOOL DISTRICT NO. )  
3 J and Larry G. Hibbard, )  
 )  
Defendants. )

This is an action brought by a pro se plaintiff, Rolf Betka, in which he invokes this court's civil rights jurisdiction pursuant to 28 U.S.C. § 1343. He alleges that the defendants conspired to deprive him of his civil rights in violation of 42 U.S.C. § 1985 and that they acted under color of state law to deprive him of his civil rights in violation of 42 U.S. § 1983.

All defendants but one have now moved to dismiss. The remaining defendant has moved for summary judgment. I conclude that the action should be dismissed and summary judgment enter as to defendant Spooner.

THE COMPLAINT

The following are named as defendants in this action:  
(1) the State of Oregon; (2) Richard B. Spooner, plaintiff's counselor at the Department of Vocational Rehabilitation; (3).

///

1 Howard Clyman, plaintiff's attorney in a divorce action; (4)  
2 Douglas S. Robertson, another attorney; (5) Gary R. Olson,  
3 the pastor of the American Lutheran Church in West Linn; (6)  
4 The Board of Education of West Linn School District; and (7)  
5 Larry G. Hibbard, principal of West Linn High School. Plaintiff  
6 alleges generally that defendants conspired to deprive him of  
7 rights to life, liberty and engaging in commerce by discouraging  
8 him from doing business in West Linn and Clackamas County,  
9 Oregon. He alleges that defendants violated his rights under  
10 the first, fourth, fifth, sixth, ninth, tenth, thirteenth and  
11 fourteenth amendments to the Constitution. He also alleges  
12 that defendants Spooner and Clyman conspired to conceal viola-  
13 tions of the Supremacy Clause.

14 In addition to these very general allegations of Constitutional  
15 violations, plaintiff makes a number of slightly more  
16 specific allegations: (1) abuse of the small claims court of  
17 Clackamas County; (2) altering contracts between plaintiff and  
18 Clackamas County plus disparaging his business; (3) allowing  
19 lawyers in Clackamas County to be a "privileged class"; (4)  
20 denying equal "utilization" of Oregon statutes; (5) allowing  
21 an unconstitutional employment policy to go unchallenged; (6)  
22 allowing attorneys to operate with state support without re-  
23 vealing this to the public; (7) allowing the Clackamas County  
24 District Attorney to abuse his discretion in deciding whom to  
25 prosecute; (8) allowing West Linn High School to alienate  
26 plaintiff from his children by engaging in "undocumented teach-  
27 ings"; and (9) allowing malicious statements by a clergyman  
28 to be treated as privileged and suppressing plaintiff from  
29 questioning the clergyman about these statements. No defendant  
30 is specifically linked with any of these allegations.

31 Finally, plaintiff alleges that defendant Spooner referred  
32 him to defendant Clyman for legal advice in connection with

1 his divorce. He alleges that the referral was made in order  
2 to conceal violations of the Supremacy Clause. This alleged  
3 conspiracy between Spooner and Clyman was allegedly carried  
4 out by Clyman's "willingness to preserve the status quo by  
5 using his positions as attorney and advisor to discredit plai  
6 tiffs [sic] character and reputation after profittaking [sic]  
7 in the divorce."

8 THE STATE OF OREGON

9 The State of Oregon moves to dismiss on the ground that  
10 it is immune from liability by virtue of the eleventh amendme  
11 This is correct. See, Quern v. Jordan, 440 U.S. 332 (1980).  
12 Furthermore, a state is not a person for purposes of either  
13 § 1983 or § 1985. Id.; Alabama v. Pugh, 438 U.S. 781 (1978).  
14 For these reasons, the State of Oregon's motion to dismiss  
15 the action should be granted.<sup>1</sup>

16 MOTIONS TO DISMISS THE SECTION 1985 CLAIMS

17 A pro se plaintiff is given wider latitude in drafting  
18 a complaint than one represented by an attorney.

19 [A] pro se complaint, "however inartfully  
20 pleaded" must be held to "less stringent  
21 standards than formal pleadings drafted by  
22 lawyers" and can only be dismissed for  
23 failure to state a claim if it appears  
24 "beyond doubt that the plaintiff can prove  
25 no set of facts in support of his claim  
26 which would entitle him to relief."

23 Estelle v. Gamble, 429 U.S. 97, 106 (1976), quoting Haines v.  
24 Kerner, 404 U.S. 519 (1972). Applying this standard, I can  
25 conceive of no set of facts which plaintiff could prove in  
26 support of either his § 1985 claims or his § 1983 claims which  
27 would entitle him to relief.

28 Section 1985(1) prohibits conspiracies designed to inter  
29 fere with anyone taking or discharging a federal office.

30  
31 <sup>1</sup>Plaintiff has moved to substitute as a defendant Verne  
32 A. Duncan, Oregon Superintendent of Public Instruction, for  
the State of Oregon. This motion should be denied since the  
action should be dismissed in its entirety.



1 Plaintiff makes no allegations that any defendants conspired  
2 against him in this way. Plaintiff has thus made no claims  
3 under § 1985(1).

4 Sections 1985(2) and 1985(3) require that the alleged  
5 conspiracy must be motivated by an invidiously discriminatory  
6 class-based animus. Hahn v. Sargent, 523 F.2d 461 (1st Cir.  
7 1975). In other words, the alleged conspiracy must be directed  
8 at the plaintiff because he is a member of a class. Plaintiff  
9 has not alleged that the alleged conspiracy was motivated by  
10 a class-based animus. He has not even alleged membership in  
11 any class. In fact, if anything, he has alleged that the  
12 defendants were motivated by a personal vendetta against him.  
13 Because there is absolutely no indication of a class-based  
14 animus motivating the alleged conspiracy, plaintiff's claims  
15 based on § 1985 should be dismissed.

#### 16 MOTIONS TO DISMISS THE SECTION 1983 CLAIMS

17 Section 1983 requires that the defendant acted under  
18 color of state law. Life Insurance Co. v. Reichardt, 591 F.2d  
19 499 (9th Cir. 1979). Plaintiff has failed to allege that  
20 defendants Clyman, Robertson and Olson acted under color of  
21 state law. Defendant Robertson is named in the complaint as  
22 an attorney. He is not linked with any allegations in the  
23 complaint other than the very general one that he is somehow  
24 a member of the conspiracy against the plaintiff. There are  
25 certainly no indications that Robertson acted in any way under  
26 color of state law. The § 1983 action against Robertson  
27 should be dismissed.

28 Defendant Clyman is alleged to have represented plaintiff  
29 in his divorce proceedings. This is the only allegation against  
30 Clyman which could be construed as alleging that he acted under  
31 color of state law. However, services performed by an attorney  
32 in connection with a lawsuit do not constitute actions under

1 color of state law. Dyer v. Rosenberg, 434 F.2d 648 (9th C.  
2 1970). The § 1983 action against Clyman should be dismissed.

3 Defendant Olson is alleged to be the pastor of the Americ  
4 Lutheran Church. The only specific allegation in the complain  
5 to which he might be linked is the one which charges that the  
6 members of the conspiracy allowed a minister's malicious state  
7 ments to be "treated as privileged information." This simply  
8 does not constitute an allegation that Olson acted under color  
9 of state law. The § 1983 action against Olson should be dis-  
10 missed.

11 Defendants Hibbard and West Linn School District may be  
12 said to have acted under color of state law since the complain  
13 may be construed to say that Hibbard was acting in his officia  
14 capacity as principal of West Linn High School when he alleged  
15 ly engaged in the conspiracy against plaintiff. The School  
16 Board as a subdivision of the State could, of course, only  
17 act in an official capacity. However, unlike the State or its  
18 agencies, a municipal corporation such as a school district  
19 is a person for purposes of § 1983. Monell v. Department of  
20 Social Services, 436 U.S. 658 (1978).

21 However, despite the fact that plaintiff has alleged that  
22 Hibbard and West Linn School Board acted under color of state  
23 law, he has failed to state a claim. His only allegation which  
24 may be construed as being against Hibbard or the School Board  
25 is:

26 Allowing the local West Linn School thru [sic]  
27 a policy of the Board of Education engage in  
28 undocumented teachings and having denied [sic]  
29 plaintiffs [sic] contribution and discussion  
30 hereto based on documented evidence resulting  
31 in an alienation of plaintiff from his child-  
32 ren for the sake of "conformity" and following  
the advise [sic] of the Counseling Dept. of  
the West Linn High School to assure a better  
future in America for the children.

Complaint at 4.

Section 1983 provides for protection of "rights, privilege

1 or immunities secured by the constitution and laws." 42 U.S.  
2 § 1983. The allegation against Hibbard and the School Board  
3 does not state a claim for violation of any rights, privilege  
4 or immunities secured by either the Constitution or federal  
5 law. At best, plaintiff has stated a claim for alienation of  
6 his children's affection. This is not a claim cognizable und  
7 federal law or the Constitution. For this reason, plaintiff'  
8 § 1983 action against Hibbard and West Linn School Board shou  
9 be dismissed.

#### 10 MOTION FOR SUMMARY JUDGMENT

11 Unlike the other defendants, defendant Spooner has moved  
12 for summary judgment. He has filed an extensive affidavit in  
13 support of this motion. Plaintiff has countered with an affi-  
14 davit of his own. On the basis of the pleadings and these  
15 affidavits, I conclude that summary judgment should be granted  
16 in favor of defendant Spooner.

17 Of all defendants named in plaintiff's complaint, Spooner  
18 is the most conspicuous. He is alleged to have been plaintiff  
19 counselor at the Department of Vocational Rehabilitation.  
20 Spooner allegedly informed plaintiff of the legal impact on  
21 his divorce proceedings of some medical condition which plain-  
22 tiff possessed. Plaintiff also alleges that Spooner was aware  
23 at that time of an employment policy of Clackamas County  
24 Educational Service District and the effect of certain teaching  
25 on plaintiff's children which plaintiff's wife thought were  
26 major points in the divorce. Spooner then referred plaintiff  
27 to attorney Clyman. He allegedly knew that Clyman was an ad-  
28 visor for the Human Resource Department of Clackamas County.  
29 The referral to Clyman was allegedly made for the purpose of  
30 concealing violations of the Supremacy Clause.

31 I note that these allegations fail to state a claim under  
32 § 1985 because there is no allegation that whatever conspiracy

1 Spooner was allegedly a part of was motivated by a class-based  
2 animus. I also note that they fail to state a claim under  
3 § 1983 because there is no claim that Spooner violated any  
4 rights, privileges or immunities secured to plaintiff by either  
5 the Constitution or federal law. However, since Spooner has  
6 put the question in issue of whether he, in fact, violated  
7 plaintiff's rights while dealing with plaintiff, I will proceed  
8 to address that question.

9 Spooner's affidavit indicates that he first saw plaintiff  
10 in his capacity as counselor with the Department of Vocational  
11 Rehabilitation in April 1977. He indicates that he was plaintiff's  
12 counselor from April 1977 until October 1978. During  
13 that time he referred plaintiff to a psychologist for evaluation.  
14 He also referred plaintiff to a Catholic priest. He  
15 also gave plaintiff the names of several attorneys who might  
16 be available to assist him in his divorce. Among these attorneys  
17 was defendant Clyman. Spooner says that he was asked to  
18 appear in a hearing in plaintiff's divorce action. He says  
19 he went to the hearing but was never called to testify. His  
20 relationship with plaintiff ended when plaintiff returned to  
21 active work in October 1978.

22 In a motion for summary judgment the movant has the burden  
23 of showing there is no genuine issue of material fact.  
24 Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970); SEC v.  
25 Murphy, 626 F.2d 633 (9th Cir. 1980). Spooner has met that  
26 burden. He has shown there is no issue of fact whether he  
27 violated any of plaintiff's rights which are secured by either  
28 federal law or the Constitution.

29 Plaintiff has the burden of coming forward with specific  
30 facts which show that there remains a genuine issue of fact  
31 for trial. Neely v. St. Paul Fire & Marine Insurance Co.,  
32 584 F.2d 341, 344 (9th Cir. 1978). Plaintiff offers his own



1 affidavit in opposition to Spooner's motion for summary judgment.  
2 His affidavit challenges various factual statements in  
3 Spooner's affidavit. However, none of the challenged statements  
4 is material. None addresses the question of whether Spooner  
5 violated plaintiff's civil rights. Even if plaintiff's version  
6 of these events are true, there is no indication that Spooner  
7 violated plaintiff's civil rights. There are no genuine issues  
8 of material fact. Spooner's motion for summary judgment should  
9 be granted.

10 CONCLUSION

11 Plaintiff's action against the State of Oregon should be  
12 dismissed. Defendant Spooner's motion for summary judgment  
13 should be granted. The action should be dismissed against all  
14 other defendants. Plaintiff's motion to substitute Verne A.  
15 Duncan as a party defendant should be denied.

16 Dated this

day of

, 1981.

17  
18   
19 United States Magistrate  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

Endorsed: 7-28-81  
Filed: ROBERT M. CHRIST, CLERK  
By: DEK Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROLF BETKA, )  
 )  
Plaintiff, )  
 )  
v. ) Civil No. 81-67  
 )  
STATE OF OREGON, et al, ) FINDINGS AND  
 ) RECOMMENDATION  
Defendants. )

Plaintiff's motion to file an amended complaint was  
denied.

The motions to dismiss should be denied as being moot.

Dated this 28 day of July, 1981.

*George E. Huber*  
United States Magistrate

ELM  
7-31

Wtd  
U. S. DISTRICT COURT  
DISTRICT OF OREGON  
**FILED**

JUL 31 1981

ROBERT M. CHRIST, CLERK  
BY *28* DEPUTY

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROLF BETKA,

Plaintiff,

vs.

Civ. 81-67

STATE OF OREGON, RICHARD B.  
SPOONER, HOWARD CLYMAN, DOUGLAS  
S. ROBERTSON, GARY R. OLSON, BOARD  
OF EDUCATION OF WEST LINN SCHOOL  
DISTRICT NO. 3 J and LARRY G.  
HIBBARD,

JUDGMENT

Defendants.

Based upon the record,

IT IS ORDERED that defendant Spooner's motion for  
summary judgment is granted and this action is dismissed.

Dated this 31st day of July, 1981.

*Robert M. Christ*  
ROBERT M. CHRIST, CLERK

JUDGMENT

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

AUG 20 1982

PHILLIP B. WINDLEMY  
CLERK U.S. COURT OF APPEALS  
No. 81-3611

ROLF BETKA,

Plaintiff-Appellant,

vs.

STATE OF OREGON, RICHARD B. SPOONER, HOWARD  
CLYMAN, DOUGLAS S. ROBERTSON, GARY R. OLSEN,  
BOARD OF EDUCATION OF WEST LINN HIGH SCHOOL  
DISTRICT NO. 3J, LARRY G. HIBBARD,

Defendants-Appellees.

DC# CV 81-67 HJF  
Oregon (Portland)

ORDER

Before: SCHROEDER and HARRIS, Circuit Judges

Appellant's petition for rehearing of the April 1, 1982 order dismissing this appeal is denied. Even if the appeal includes the district court's order of October 27, 1981, as well as the order of September 29, 1981, previously brought to our attention, appellant's failure to post bond for appellees' costs compelled dismissal. All other pending motions are denied as moot. In accordance with the provisions of Fed. R. App. P. 41(a), the mandate shall issue immediately.

MoCal 3/22/82



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

APR 01 1982

PHILLIP B. WINFERRY  
CLERK OF THE COURT

ROLF BETKA,

Plaintiff-Appellant,

vs.

STATE OF OREGON, RICHARD B. SPOONER, HOWARD )  
CLYMAN, DOUGLAS S. ROBERTSON, GARY R. OLSEN, )  
BOARD OF EDUCATION OF WEST LINN HIGH SCHOOL )  
DISTRICT NO. #J, LARRY G. HIBBARD, )

Defendants-Appellees. )

No. 81-3611

DC# CV 81-67 HJF  
Oregon (Portland)

ORDER

Before: SCHROEDER and NORRIS, Circuit Judges

The parties' responses to the court's order of February 16, 1982, reveal that the court has no jurisdiction to review the district court's final judgment entered July 31, 1981. In the circumstances of this case, appellant's August 10, 1981 motion cannot be construed as a notice of appeal, and his August 19, 1981 motion did not toll the time for filing a notice of appeal. See Fed. R. Civ. P. 59(e); Fed. R. App. P. 4(a)(4). Accordingly, the only matter properly before the court is appellant's challenge to the district court's order of September

29, 1981, which we construe as a denial of relief under Fed. R. Civ. P. 60(b).

Appellees' motion to dismiss the appeal is granted, and the appeal is dismissed. In light of the limited scope of the appeal, the district court's January 4, 1982 order, which required appellant to post a \$6,000 cost bond, was unquestionably warranted, and appellant's failure to comply with the order compels the dismissal of the appeal.

1 IN THE UNITED STATES COURT OF APPEALS

2 FOR THE NINTH CIRCUIT

3 ROLF BETKA,

4 Plaintiff-Appellant,

5 v.

6 STATE OF OREGON, RICHARD B. SPOONER,  
7 HOWARD CLYMAN, DOUGLAS S. ROBERTSON,  
8 GARY R. OLSEN, BOARD OF EDUCATION  
9 OF WEST LINN SCHOOL DISTRICT NO. 3J,  
and LARRY G. HIBBARD,

Defendant-Appellees.

) CA No. 81-3611

) DC No. CV 81-67 HJP  
) Oregon (Portland)

10 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

11 Notice is hereby given that Rolf Betka the plaintiff above named,  
12 hereby appeals to the Supreme Court of the United States from the  
13 final order denying rehearing from April 1, 1982 order dismissing  
14 the appeal entered in this action on August 20, 1982.

15 This appeal is taken pursuant to Title 28, United States Code,  
16 Section 1252, 1257(2) and 1651.

17 DATED: September 15, 1982

18 *Rolf Betka*  
19 ROLF BETKA, In Pro Per  
20 19886 S. White Cloud Circle  
21 West Linn, Ore. 97068  
22 Telephone: (503) 657-3669

23 RECEIVED  
24 PHILLIP B. WINSTON  
25 CLERK, U.S. COURT OF APPEALS  
26 SEP 17 1982  
FILED  
DCKETED 9/17/82  
DATE  
INITIAL

1                                    AFFIDAVIT OF SERVICE

2  
3    STATE OF OREGON        )  
4                                )  
5    County of Clackamas)

ss.

6            I, Rolf Betka, the plaintiff-appellant in this case, beeing first  
7    duly sworn deposes and says:

8            On September 15, 1982, a true and correct copy of the foregoing  
9    NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES was served  
10   on the following individuals by depositing same in the United states  
11   mail in Lake Oswego, Ore., enclosed in a sealed envelope with postage  
12   thereon fully prepaid and addressed as follows:

13        T.D. Norwood  
14        Asst Attorney General  
15        505 Pacific Bldg  
16        520 SW Yamhill Street  
17        Portland, Ore. 97204

Attorney for State of Oregon  
and R.B. Spooner

18        R. Erick Johnson  
19        1000 Willamette Center  
20        Portland, Ore. 97204

Attorney for H.Clyman and G.R.  
Olsen

21        Lang, Klein, Wolf, Smith,  
22        Griffith & Hallmark  
23        One SW Columbia, Suite 800  
24        Portland, Ore. 97258

Attorneys for D.S. Robertson

25        Hibbard, Caldwell, Bowerman  
26        Schultz and Haggert  
27        P.O. Box 667, Oregon City, Ore. 97045  
28        Solicitor General, Dept of  
29        Justice, Washington DC 20530

Attorneys for West Linn School  
District and L.G. Hibbard

30    This affidavit of Service is made according to Supreme Court Rule 10  
31    and 28 and with the additional following statement:



1 Plaintiff-Appellant Rolf Betka pursuant to Title 28 USCA,  
2 Section 2403 (a) and (b)-besides State of Oregon and one State  
3 Official being a party the clerk of the U.S. District Court for  
4 Oregon and one unknown official of the 9th Cir.Court of Appeals  
5 have interfered- has drawn the validity of Oregon Statutes in question  
6 by having given "Notification of Unconstitutionality" to both courts  
7 involved and it appears that they have not certified it to the U.S.  
8 Attorney General or to the Attorney General of the State of Oregon.

9 Charges of denial of due process by both courts are part of the  
10 reason for the appeal. Falsification of the Certificate of Record of  
11 Appeal was covered up by denying plaintiff-appellant a hearing made  
12 under FRAP 10 (e) in the 9CA to allow the Distr. Court to rule on it  
13 resulting in Distr.Court order stating .. to pay Cost bond or no  
14 correction would be allowed. The charges of falsification had been  
15 submitted to the 9th Cir.Court. The Clerk of the Distr. Court had  
16 employed at least 2 ducketclerks who had made intentional false  
17 entries to cover up the insufficient fact finding process used and  
18 the denial of at least one hearing. The order by the District Court of co  
19 used by the 9th Cir. to deny jurisdiction was issued approx. two months (bon  
20 after the Notice of Appeal and stated that the appeal is taken in bad  
21 faith when as a matter of fact the same judge and magistrate involved  
22 where the ones having denied due process and fairness. In addition  
23 a proceeding under FRAP 10(c) entered in the Court of Appeals -  
24 to restore the omitted oral argument hearing - and under Title 28-455  
25 was not allowed.

26 Affiant is competent to testify to these facts known to be true and is  
willing to produce the listed documents.

Page

2 of 2

Sworn to before me, Sept 15, 1982

Notary Public of Oregon, my commission expires:

*Theresa H. Goben*

*Rolf Betka*